



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0313]

RIN 1625-AA00

Safety Zones; Annual Fireworks Events in the Captain of the Port
Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations by adding four permanent safety zones within the Captain of the Port Detroit Zone. This action is necessary to provide for the safety of life and property on navigable waters during each event. This action is intended to restrict vessel traffic in portions of the Captain of the Port Detroit Zone.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, are part of docket number USCG-2012-0313 and are available for inspection at any one of the following methods:

- (1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. If you have questions on viewing material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 22, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone in the Federal Register (77 FR 30245). We did not receive any comments in response to the proposed rule. No public meeting was requested and none was held.

Basis and Purpose

Currently, 33 CFR 165.941(a) permanently lists fifty-six permanent safety zones within the Captain of the Port Detroit Zone. Each of these fifty-six permanent safety zones corresponds to an annually recurring fireworks display. A recent survey within the Captain of the Port Detroit Zone revealed four additional recurring events that require, in the Captain of the Port's opinion, a safety zone because these events may present dangers to the boating public. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Three of these four additional fireworks displays occur within a single month each year. The other event, the Put-In-Bay Chamber of Commerce Fireworks, occurs four times a year; twice in June and twice in September. Each of these additional fireworks events typically occurs during the same week of its respective month, but the exact date and times of each of these events will be determined each year.

Background

To mitigate the dangers presented by these four recurring fireworks displays, the Captain of the Port Detroit has determined that establishing safety zones is necessary. Thus,

the Coast Guard is amending 33 CFR 165.941 by adding four permanent safety zones. These safety zones will be enforced in the following locations and at the following times:

The safety zone for the Catawba Island Club Fireworks, Catawba Island, OH, will encompass all waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41-34'-18.10"N, 082-51'-18.70"W (NAD 83). This zone will be enforced one evening during the last week in May.

The safety zone for the Put-In-Bay Chamber of Commerce Fireworks, Put-In-Bay, OH, encompasses all the waters of Lake Erie within a 1000-foot radius of the fireworks launch site located at position 41-39'-19" N, 082-48'-57" W (NAD 83). This zone will be enforced one evening during the third week in June, one evening during the last week in June, one evening during the first week in September, and one evening during the second week in September.

The safety zone for the Bay Point Fireworks Display, Marblehead, OH, encompasses all the waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41°30'29.23"N, 082°43'8.45"W (NAD 83). This zone will be enforced one evening during the first week in July.

The safety zone for the Marysville Days Fireworks, Marysville, MI, encompasses all waters of the St. Clair River bounded by the arc of a circle with a 600-foot radius with its

center in approximate position 42°54'25" N, 082°27'58" W (NAD 83). This zone will be enforced one evening during the last week in June.

The Captain of the Port Detroit will use all appropriate means to notify the public when the safety zones in this ruling will be enforced. Consistent with 33 CFR 165.7(a), such means of may include, among other things, publication in the Federal Register, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement of a safety zone in this section is cancelled prematurely.

Entry into, transiting, or anchoring within each of these safety zones during a period of enforcement is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

Discussion of Comments and Changes

No comments were received and there are no changes to the rule as proposed by the NPRM published on May 22, 2012.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the

Captain of the Port. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

2. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in the above portions of Lake Erie and the Saint Clair River during the period that any of the proposed safety zones is being enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the above Regulatory Planning and Review section. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that

this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect

on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630,

Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not

a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones and thus, is categorically excluded under paragraph (34)(g) of the Instruction. An environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland

Security Delegation No. 0170.1.

2. In § 165.941, add paragraphs (a) (56) through (59) to read as follows:

§ 165.941 Safety Zones; Annual Events in the Captain of the Port Detroit Zone.

(a) * * *

(56) Catawba Island Club Fireworks ; Catawba Island, OH:

(i) Location. All waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41-34'-18.10"N, 082-51'-18.70"W (NAD 83).

(ii) Expected date. This safety zone will be enforced one evening during the last week in May.

(57) Put-In-Bay Chamber of Commerce Fireworks, Put-In-Bay, OH:

(i) Location. All waters of Lake Erie within a 1000-foot radius of the fireworks launch site located at position 41-39'-19" N, 082-48'-57" W (NAD 83). This area is located in the Put-In-Bay Harbor.

(ii) Expected dates. This safety zone will be enforced one evening during the third week in June, one evening during the last week in June, one evening during the first week in September, and one evening during the second week in September.

(58) Bay Point Fireworks Display, Marblehead, OH:

(i) Location. All waters of Lake Erie within a 250-yard

radius of the fireworks launch site located at position 41-30'-
29.23"N, 082-43'-8.45"W (NAD 83).

(ii) Expected date. This safety zone will be enforced one
evening during the first week in July.

(59) Marysville Days Fireworks, Marysville, MI:

(i) Location. All waters of the St. Clair River within a 600 foot radius of the fireworks launch site located on land at position 42-54'-25"N, 082-27'-58"W (NAD 83).

(ii) Expected date. This safety zone will be enforced one evening during the last week in June.

Dated: July 6, 2012

D.V. SMITH
Commander, U.S. Coast Guard
Acting Captain of the Port Detroit

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